

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
AUG 22 2000

THOMAS J. MORIARTY, Trustee
on behalf of the TEAMSTERS
LOCAL UNION NO. 727 HEALTH
AND WELFARE FUND,

Plaintiffs,

v.

ARTURO JAUREGUI, an individual,
and JAUREGUI & ASSOCIATES, P.C.,

Defendants.

00C 5117

JUDGE CONLON

MAGISTRATE JUDGE ASHMAN

COMPLAINT

Plaintiff, Thomas J. Moriarty, trustee on behalf of the Teamsters Local Union No. 727 Health and Welfare Fund, by his attorneys, for a complaint against the defendants, alleges as follows:

Jurisdiction and Venue

1. This is an action pursuant to federal common law and Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1132(a)(3), to enforce the terms of a health and welfare plan.

2. This Court has jurisdiction pursuant to 28 U.S.C. §1331, and Sections 502(e)(1) and 502(f) of ERISA, 29 U.S.C. §§1132(e)(1) and 1132(f).

3. Venue is based on Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), and because the Fund is administered in this judicial district.

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Parties

4. The Teamsters Local Union No. 727 Health and Welfare Fund ("Fund") is a multi-employer employee benefit plan within the meaning of Section 3(1), (3), and (37) of ERISA, 29 U.S.C. §1002(1), (3), and (37). The Fund is administered in Chicago, Illinois.

5. Plaintiff Thomas J. Moriarty ("Moriarty") is a Trustee and a "fiduciary" of the Fund as that term is defined in Section 3(21) of ERISA, 29 U.S.C. §1002(21). Moriarty is authorized to commence a civil action to enforce the terms of the plan.

6. Defendant Arturo Jauregui ("Jauregui") is a citizen and resident of the State of Illinois. Jauregui is and at all relevant times was an attorney licensed to practice in the State of Illinois.

7. Defendant Jauregui & Associates, P.C., (the "firm") is an Illinois professional corporation that is and at all times relevant has provided legal services in the State of Illinois. The firm is owned by Jauregui.

Claim for Relief

8. Uver Cruz ("Cruz") is and at all relevant times was a Fund participant eligible to receive benefits in accordance with the written terms of the Fund's plan document.

9. The Fund provides *inter alia* medical benefits to eligible participants and their dependents in accordance with the plan's written terms.

10. The plan provides that a participant who has a right of recovery against a third-party must, prior to any distribution of a settlement or judgment, reimburse the Fund for any amount paid by the Fund on the participant's behalf.

11. On October 25, 1998, Cruz was injured in a hit-and-run accident.

12. Cruz retained Jauregui and the firm to represent him in a claim against a third-party insurance company.

13. On or about July 28, 1999, Cruz signed an Agreement to Repay the Fund in the event he recovered by way of settlement or judgment from the third-party. A true and accurate copy of the Agreement to Repay is attached as Ex. A.

14. On July 28, 1999, Jauregui signed the "consent" provision of the Agreement to Repay, pursuant to which he agreed to repay the Fund – after deducting his costs and attorneys' fees – from the net recovery before any other distribution was made. *See* Ex. A.

15. The Fund received medical bills from various health care providers in the total amount of approximately \$72,073.87 for the treatment of Cruz' injuries.

16. The Fund paid the various health care providers a total of approximately \$46,729.34 in medical benefits on Cruz' behalf for the services they provided Cruz in the treatment of the injuries he incurred from the accident.

17. The Fund advised Jauregui and the firm of the claims actually incurred for Cruz' medical treatment and the amounts paid by the Fund on Cruz' behalf.

18. On or about August 6, 1999, Cruz received a \$20,000.00 settlement from the third-party.

19. Jauregui and the firm: (a) received the \$20,000.00 settlement proceeds; (b) on information and belief deposited the settlement proceeds in an escrow account; (c) allocated the settlement proceeds between Jauregui and the firm and Cruz as follows – approximately \$6,660.00 (*i.e.* one-third of the settlement proceeds) to Jauregui and the firm, and \$13,340.00 (*i.e.* two-thirds

of the settlement proceeds) to Cruz; and (d) distributed the settlement proceeds as previously set forth.

20. Jauregui and the firm violated the terms of the Agreement to Repay by failing to reimburse the Fund for the amounts paid on Cruz' behalf.

WHEREFORE, Plaintiff requests the following relief:

A. Judgment in favor of Plaintiff and against the defendants, jointly and severally, for:

(i) reimbursement of the settlement proceeds to which Plaintiff is entitled under the Agreement to Repay in the amount of \$20,000.00 less the amount – if any – to which the defendants are entitled for costs and fees incurred in obtaining the settlement;

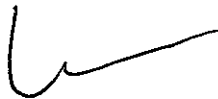
(ii) pre-judgment interest at the prevailing rate from August 6, 1999 – the time the settlement proceeds became due and owing the Plaintiff – to the date of judgment; and

(iii) attorneys fees and costs incurred in this action, pursuant to Section 502 (g)(1) of ERISA, 29 U.S.C. §1132(g)(1).

B. That this Court retain jurisdiction of the cause pending compliance with its orders.

C. For such other relief as this Court may deem just and proper.

Respectfully submitted,



William W. Leathem
Attorney for the Plaintiff
Jacobs, Burns, Orlove, Stanton & Hernandez
300 West Washington Street, Suite 1200
Chicago, IL 60606-2002
(312) 372-164

EXHIBIT A

SUBROGATION AGREEMENT TO REPAY

I am a Participant in the Teamsters Local No. 727 Health and Welfare Fund, hereafter the "FUND". I believe that I, or my dependent, has a right of recovery against a person, organization, insurance company, or employer (hereafter the "third party") for an illness or injury. However, the third party refuses to pay any medical expenses incurred for the treatment of my/my dependent's illness/injury. Therefore, I request the Fund to pay current and future medical expenses necessary for treatment of my/my dependent's illness/injury. I recognize the Fund's right of subrogation of all claims I may have. I understand that the Fund is not obligated to pay medical expenses arising out of any occupational illness or injury.

I hereby agree to file a claim with my own insurance company under my automobile or homeowner's/renter's policy, if applicable, for all expenses which I have requested the Fund to pay. I hereby acknowledge that the Fund may notify any appropriate insurance company of the Fund's right of recovery or lien.

In consideration of the payments made by the Fund, I agree to repay the Fund the full amount of all medical expenses paid on my behalf if payment is made to me or on my behalf, or to my dependent, including a minor child, by any third party, whether by compromise, by settlement, or agency, or arbitration tribunal. Any such payment by the third party shall first be applied to pay my attorney's fees and court costs and shall next be applied as payment to the Fund in full of the amount paid by the Fund. However it is expressly understood that, under the terms of the Health and Welfare Plan, no deduction shall be made from the Fund's share for attorney's fees or court costs incurred in collecting from a third party. It is also understood that the Fund's share will not be reduced because of my or my dependent's contributory/or comparative negligence.

I hereby authorize and direct my attorney to periodically advise the Fund in writing as to the status of my claim against a third party. I direct that my attorney shall not disburse any funds due me or my dependent on my claim until after the total amount due the Fund has been paid.

The illness/injury occurred on 10/25/98.

My attorney is: ARTURO LAUREGO
 Address: 221 N LA SALLE STREET, SUITE 769 Phone: (312) 78-19103
 City: CHgo, IL. 60601 Zip: _____ State: _____

I have read this Agreement and agree to be fully bound by it in consideration for the benefits I may be entitled to from the Fund.

OVERA CRUZ
 MEMBER
ADYLENE CRUZ
 DEPENDENT

MARTHA CRUZ
 SPOUSE

*****Please have your attorney complete the reverse side*****

CONSENT

In consideration for the Teamsters Local Union No. 727 Health and Welfare Fund's ("Fund") agreement to pay benefits to my client and to cooperate with me regarding the prosecution of any claim or lawsuit, I agree to advise the Fund, upon request, but no more than 2 times per year, of the status of the claim. I also agree to advise the Fund of the full amount offered in settlement or obtained by judgment, etc. I further agree that when any funds are made available for distribution to my client, after deducting costs and fees to which I, or any attorney to whom this matter is referred, may be entitled, will first apply the net proceeds in payment of the amount advanced by the Fund before any other distribution is made. I expressly agree that I am not entitled to a deduction for attorney's fees or costs from any amount paid to the fund, i.e. the "common funds" doctrine is not applicable.


ATTORNEY

DATE; 7/28/99

JS 44
(Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Thomas J. Moriarty

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

William W. Leathem
Jacobs, Burns, Orlove, Stanton & Hernandez
300 West Washington St., Suite 1200
Chicago, IL 60606 (312) 372-1646

DEFENDANTS

Arturo Jauregui, et al.

JUDGE CONLON

MAGISTRATE JUDGE ASHMAN

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

DOCKETED

AUG 22 2000

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Section 502(a)(3) of ERISA, as amended, 29 U.S.C. §1132(a)(3), to enforce the terms of a health and welfare plan.

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND:

☐ YES ☒ NOVIII. This case ☒ is not a refiling of a previously dismissed action.☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE

August 21, 2000

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

00C 5117

In the Matter of

Thomas J. Moriarty,

v.

Arturo Jauregui, an individual, and
Jauregui & Associates, P.C.

Case Number: GE CONLON

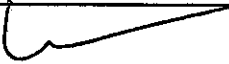
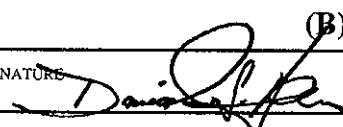
MAGISTRATE JUDGE ASHMAN

DOCKETED

AUG 22 2000

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

The Plaintiff, Thomas J. Moriarty.

(A)	(B)
SIGNATURE 	SIGNATURE 
NAME William W. Leathem	NAME David S. Allen
FIRM Jacobs, Burns, Orlove, Stanton & Hernandez	FIRM Jacobs, Burns, Orlove, Stanton & Hernandez
STREET ADDRESS 300 West Washington St., Suite 1200	STREET ADDRESS 300 West Washington St., Suite 1200
CITY/STATE/ZIP Chicago, IL 60606-2002	CITY/STATE/ZIP Chicago, IL 60606-2002
TELEPHONE NUMBER (312) 372-1646	TELEPHONE NUMBER (312) 372-1646
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06201484	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 03128186
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>

PLEASE COMPLETE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE

1-3